SUPREME COURT, U. S.
Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1966.

No. 990

AMERICANA OF PUERTO RICO, INC.,
Respondent,

vs.

SAMUEL R. KAPLUS AND J. KAPLUS & SONS, INC.,
Petitioners.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

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TO THE HONORABLE THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioners, SAMUEL R. KAPLUS and J. KAPLUS & SONS, INC., respectfully pray that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Third Circuit in an original and amended Opinion (annexed hereto) per Biggs, J.

The Opinion of the United States District Court for the District of New Jersey is not reported.

The decision of the United States Court of Appeals for the Third Circuit is not reported as of the preparation of this petition.

The Judgment sought to be reviewed is dated October 27, 1966 and was entered on the same date.

JURISDICTION.

The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTIONS PRESENTED.

1. Are judgments of the Superior Court of Puerto Rico, as that court was established after July 1952, within the contemplation of the provisions of 28 U. S. C. 1738?

2. Is Congress constitutionally competent to prescribe full faith and credit in the courts of the states of the union for judgments of the Superior Court of Puerto Rico, as that court was established after July 1952?

STATUTE INVOLVED.

This case involves 28 U. S. C. 1738, which reads in pertinent part as follows:

> "The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the Clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the Court that the said attestation is in proper form.
>
> "Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the Courts of such State, Territory or Possession from which they are taken. June 25, 1948, c. 646, 62 Stat. 947." 28 U. S. C. 1738; U. S. C. A. Title 28, §1738.

STATEMENT OF CASE.

After personal service upon the defendants in the Superior Court of Puerto Rico, San Juan Part, default judgment was entered in that court against both defendants on April 28, 1964 for the sum of $10,100.00. The present action, by way of suit on that judgment, was filed in the United States District Court for the District of New Jersey. The Complaint in the District Court posited jurisdiction on the basis of diversity of citizenship, alleging that plain-

tiff corporation was a citizen of Puerto Rico and that the defendants were citizens of New Jersey. By way of Answer to the Complaint, defendants interposed separate defenses directed to the cause of action underlying the judgment entered in the Superior Court of Puerto Rico. Defendants also moved for dismissal of the action upon the ground that the Court lacked subject matter jurisdiction, saying more particularly that diversity jurisdiction does not lie in favor of a citizen of Puerto Rico.

Plaintiff moved for Summary Judgment in its favor upon the ground that the Judgment of the Superior Court of Puerto Rico was entitled to full faith and credit pursuant to the provisions of 28 U. S. C. 1738.

The trial court denied defendants' application to dismiss the Complaint, granted plaintiff's Motion for Summary Judgment, and entered Judgment on April 21, 1965 in favor of the plaintiff and against the defendants. By Notice of Appeal, dated May 17, 1965, defendants appealed from that Judgment to the United States Court of Appeals for the Third Circuit. That court affirmed the Judgment of the trial court.

We feel obliged to inform this Court as follows: After the filing of briefs in the Court of Appeals, and immediately before oral argument, that court was informed that the plaintiff was, in fact, a citizen of the State of New York, making the diversity question moot. Because of its mootness, the diversity question was not argued orally before the Court of Appeals. Nevertheless, that court proceeded to decide that question in its Opinion.

REASONS FOR GRANTING OF WRIT.

The decision below has applied the principles and rationale of *Embry v. Palmer*, 107 U. S. 3, 27 L. Ed. 346 (1882), and *Metcalf v. Watertown*, 153 U. S. 671, 38 L. Ed 861 (1893), in a manner in conflict with those decisions of this Court. *Embry* and *Metcalf*, in supporting congressional competency to prescribe full faith and credit for judgments of courts of the Territories found that competency in the constitutional power of Congress to prescribe the effect of judgments of courts of the United States established under the judicial power granted to the federal government by the Constitution; 107 U. S., at page 9, and 153 U. S., at page 676. It was not the geography of the courts involved in those cases, but the identity of their creator which was determinative. The opinion below erroneously adjudged full faith and credit for the judgment of the Superior Court of Puerto Rico by reason of its being located in a "territory", despite the undeniable fact that the Supreme Court of Puerto Rico was not created by Congress and is not a court of the United States and is not established under the judicial power of the United States.

Whether or not Congress has constitutional competency to prescribe the effect in state courts of judgments or decrees of courts other than United States courts has never been decided by this court or, insofar as we have been able to ascertain, by any other Court of Appeals or other District Court. The decision below fails to designate the constitutional source of the congressional power which it sustains and there is substantial doubt that such a source exists. Whether or not Congress is invested with such constitutional authority ought to be decided by this Court and the grounds of the decision amplified sufficiently to

cause the least possible abrasion to our system of Federalism.

No future case could present the questions involved in more direct fashion. To postpone the expression of this Court's views until some possible future case invites conflict amongst the circuits during the interim. The request that this Court speak is not presented in a vacuum. The value of goods exported from Puerto Rico to the United States in 1961-62 was $725.2 million; in 1963-64, the value increased to $864.7 million. At the same time, Puerto Rico purchased more than a billion dollars worth of goods from the United States mainland. The Commonwealth of Puerto Rico now ranks fifth amongst all the nations of the World as a marketplace for United States products. Que Pasa in Puerto Rico, Vol. 18, No. 4, April 1966.

Puerto Rico is economically a part of the United States. The island's currency is the United States dollar. Money, people and goods move freely between the United States and Puerto Rico. The extent of this commerce between the States and Puerto Rico and the fact that it continues to grow in volume indicate the need of this Court's opinion on the questions involved.

It was fairly possible for the court below to have construed 28 U. S. C. 1738 as not including within its contemplation judgments of the Supreme Court of Puerto Rico, and thereby to have avoided the question of its constitutionality. By failing to do so, the court below has decided this case in a manner in conflict with a cardinal principle of statutory construction laid down by this court in *International Machinists v. Street*, 367 U. S. 740, 6 L. Ed. 2d 1141 (1961), and repeated by this court in many other decisions. In holding that 28 U. S. C. 1738 includes within its contemplation judgments of the Superior Court of Puerto Rico, the court below attributed to Congress an intention to continue in force legislation of dubious consti-

tutionality. Absent review by this court, there is no reason to expect Congress to speak one way or the other on a question of grave constitutional, political, and economic concern to all of the States, the citizens thereof, and to the inhabitants of the Commonwealth of Puerto Rico. To the best of our knowledge, judgments of the courts of the various states of the Union do not enjoy full faith and credit in the courts of Puerto Rico. Without the authoritativeness of an expression of this court's views, it is unlikely that Puerto Rico will act one way or another on the subject.

IMPLICATION OF 28 U. S. C. 2403.

The provisions of 28 U. S. C. 2403 may be applicable to this case. A copy of this Petition for Certiorari is being duly served upon the Solicitor General of the United States. Upon docketing of this case in the U. S. Court of Appeals for the Third Circuit, the Attorney General of the United States was notified thereof in accordance with the provisions of 28 U. S. C. 2403.

CONCLUSION.

For the reasons assigned, it is respectfully submitted that this Court should grant the Writ of Certiorari to the petitioners.

Respectfully submitted,

JACK L. COHEN,
Attorney for Petitioners.

OPINION.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY.

AMERICANA OF PUERTO RICO, INC.,
Plaintiff,
v.
SAMUEL R. KAPLUS AND
J. KAPLUS & SON, INC.,
Defendants.

Civil Action No. 641-64.

SHAW, U. S. D. J.

Plaintiff moves pursuant to Rule 56 (F. R. C. P.) with supporting affidavit for summary judgment. Defendants have not filed a counter affidavit and the facts asserted in plaintiff's affidavit in accordance with Rule 56(e) stand admitted for the purposes of this motion.

The pertinent facts are: Plaintiff is a corporation of the Commonwealth of Puerto Rico with its principal place of business in San Juan. Defendant Samuel R. Kaplus, is a citizen of the State of New Jersey and defendant J. Kaplus & Son, Inc. is a corporation of the State of New Jersey having its principal place of business in that state. Plaintiff obtained a judgment against defendants[1] in the amount

[1] Judgment against the corporate defendant was entered in the name of "Kaplus & Sons, Inc." but it appears by the record of process served on this defendant that it was named therein as "J. Kaplus & Sons, Inc." and that "J. Kaplus & Sons, Inc." was in fact the corporate defendant against whom the judgment was obtained.

of $10,100 on April 28, 1964 in the Superior Court of Puerto Rico. The fact that the Court had jurisdiction over the parties and the subject matter is not challenged. The judgment entered is conceded to be a valid and enforceable judgment in the Commonwealth of Puerto Rico.

Plaintiff seeks on the basis of the judgment obtained against defendants in Puerto Rico to have judgment entered in this Court against them in the sum of $10,100 together with interest from April 28, 1964 and costs of suit.

Defendants oppose plaintiff's motion on two grounds, to wit: (1) This Court does not have subject matter jurisdiction. (2) The judgment of the Superior Court of Puerto Rico is not entitled to full faith and credit in this Court.

Subject matter jurisdiction is alleged to exist by virtue of 28 U. S. C. §1332 which provides in pertinent part:

> (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and is between ——
>
> (1) citizens of different States;
>
> * * * * * * * *
>
> (d) The word "States", as used in this section includes * * * the Commonwealth of Puerto Rico.

Defendants contend that enactment of §1332(d) is an unconstitutional exercise of legislative power. They argue that Article III of the Constitution limits the judicial power to controversies "between Citizens of different States * * *," and that Congress may not extend such power. Prevailing authority is to the contrary. Congress has the power to confer such jurisdiction as is disputed here upon a federal court by virtue of Article IV, §3 of the Constitution. *Siegmund v. General Commodities Corp.*, 175 F. 2d 952 (9th Cir. 1949); *Detres v. Lions Building Corp.*, 234 F. 2d 596 (7th Cir. 1956); *Lummus Company v.*

Commonwealth Oil Refining Co., 195 F. Supp. 47 (D. C. S. D. N. Y. 1961). Also see *National Mutual Insurance Co. v. Tidewater Transfer Co.*, 337 U. S. 582 (1949).

Defendants argue that the judgment obtained by plaintiff in a competent court of jurisdiction in Puerto Rico is not entitled to full faith and credit in this Court for two reasons: (1) It is not a judgment within the contemplation of 28 U. S. C. §1738. (2) If it be a judgment contemplated by the provisions of 28 U. S. C. §1738, to that extent the statute is unconstitutional.

28 U. S. C. §1738 provides in pertinent part that the judicial proceedings of a territory:

> "* * * shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such * * * Territory * * * from which they are taken."

The distinction urged by defendants is that Puerto Rico is a commonwealth and not a territory. This distinction has not been held to have any significance with respect to the application of other statutes. In *Moreno Rios v. United States*, 256 F. 2d 68 (5th Cir. 1958), the question was whether the Narcotic Drugs Import and Export Act continued to be applicable to Puerto Rico after it acquired commonwealth status. The Court stated at 71 and 72:

> "If the Congress originally intended to apply the Act to Puerto Rico, it would seem clear, in view of the general provision of the Federal Relations Act to the effect that the stautory laws of the United States not locally inapplicable shall have the same force and effect in Puerto Rico as in the United States, that it was not necessary for the Congress to alter specifically all outstanding statutes thereto previously applicable in order to continue their effectiveness in Puerto Rico after it became a commonwealth in 1952."

The Federal Relations Act referred to in *Moreno Rios*, supra, provides in relevant part:

> "The statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Puerto Rico as in the United States * * *." 48 U. S. C. 734.

In *Detres v. Lions Building Corp.*, supra, the Court after reviewing the legislative history of the Act giving Puerto Rico commonwealth status (Act of July 3, 1950, c. 446, 64 Stat. 319) stated:

> "The above expressions all indicate that the persons interested in and responsible for the Act did not think that Puerto Rico was thereby changed from a territory to some other political entity.
>
> "The mere change of the name of Puerto Rico to the Commonwealth of Puerto Rico did not change Puerto Rico from a territory to a commonwealth unless its form of government was so changed as to actually make it a commonwealth.
>
> * * * * * * * *
>
> "Puerto Rico both before and after the adoption and approval of its constitution was a territory of the United States within the meaning of the diversity section of the federal code of civil procedure."

The argument that the statute so construed is unconstitutional is likewise without merit. It is true that Article IV, §1 of the Constitution speaks only of full faith and credit to be given to *state* proceedings. But Congress, by virtue of Article IV, §3 is vested with full power to legislate for the territories. *Simms v. Simms*, 175 U. S. 162, 168 (1899). That constitutional authorization certainly includes the power to declare that full faith and credit be

given to judgments of territorial courts. In an analogous situation, the Supreme Court held that Congress is not bound solely by Article IV, §1 when enacting full faith and credit legislation. Discussing an earlier version of the present statute (28 U. S. C. §1738) the Court in *Metcalf v. Watertown,* 153 U. S. 671 676 (1894), said:

> "So far as that section relates to the effect to be given to the judicial proceedings of the States, it is founded on Article IV, section 1, of the Constitution; but the power to prescribe what effect shall be given to the judicial proceedings of the courts of the United States is conferred by other provisions of the Constitution, such as those which declare the extent of the judicial power of the United States; which authorize all legislation necessary and proper for executing the powers vested by the Constitution in the government of the United States, or in any department or officer thereof; and which declare the supremacy of the power of the national government within the limits of the Constitution."

Judgment will be entered in favor of plaintiff and against defendants in the amount of $10,100 with interest computed thereon from April 28, 1964 and costs.

An appropriate order for entry of judgment will be submitted.

OPINION OF THE COURT.

(Filed October 27, 1966.)

By BIGGS, *Circuit Judge.*

This diversity action[1] is grounded on a default judgment, obtained in the Superior Court of Puerto Rico for $10,100 by Americana of Puerto Rico, Inc., against Samuel R. Kaplus and J. Kaplus & Son, Inc.[2] The defendants appeal from a summary judgment rendered on the ground that the courts of the Commonwealth of Puerto Rico are entitled to full faith and credit under 28 U. S. C. Section 1738 and also from an order denying their cross-motion to dismiss for lack of jurisdiction. The cross-motion was based on the theory that 28 U. S. C. Section 1332(d) was inapplicable to Puerto Rican residents in that Congress could not extend the diversity jurisdiction to them. See 240 F. Supp. 854 (1965).

We will consider the jurisdictional question first. Congress created the lower federal courts and prescribed their jurisdiction by the Judiciary Act of 1789. The Act stated that "The district courts shall have original jurisdiction

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[1] Judgment against the corporate defendant was entered in the name of "Kaplus & Sons, Inc." but this appears to be a mere typographical error. The attached summons and complaint served on the defendants which resulted in the judgment in Puerto Rico describe the corporate defendant as "J. Kaplus & Sons, Inc." It is apparent that "J. Kaplus & Sons, Inc." was in fact the corporate defendant against whom the judgment was obtained.

[2] The plaintiff is a corporation of the Commonwealth of Puerto Rico, with its principal place of business at San Juan, Puerto Rico. The defendant, Samuel R. Kaplus, is a citizen of the State of New Jersey and the defendant, J. Kaplus & Sons, Inc., is a corporation of the State of New Jersey, having its principal place of business in the State of New Jersey.

of all civil actions where the matter in controversy exceeds the sum or value of . . . [now $10,000 then $3,000] and is between—(1) citizens of different States. . . ." The construction of this section came before the Supreme Court in 1805 in Hepburn and Dundas v. Ellzey, 6 U. S. (2 Cranch) 445. Mr. Chief Justice Marshall held that a District of Columbia resident could not maintain a suit in the federal district court under the diversity clause. Since Congress copied the constitutional phrase *in haec verba*, Mr. Chief Justice Marshall, seeking to ascertain the intent of Congress, concluded that the District of Columbia was not within the purview of the word "State". He added, however: "It is true, that as citizens of the United States and of that particular district which is subject to the jurisdiction of congress, it is extraordinary, that the courts of the United States, which are open to aliens, and to citizens of every state in the union should be closed upon them. But this is a subject for legislative, not judicial consideration." Id. at 453.

Hepburn remained the law for more than 135 years. In 1940, Congress expanded the diversity jurisdiction of the courts to include controversies between "citizens of different States, or citizens of the District of Columbia, the Territory of Hawaii or Alaska and any State or Territory." 54 Stat. 143. Constitutional power for this enactment was found in 1949. See National Mutual Insurance Company v. Tidewater Oil Co., 337 U. S. 582. The plaintiff in this case was a corporation in the District of Columbia. A majority of five Justices agreed that Congress had the sanction of the Constitution, i.e., that a source of constitutional power supported the enactment. A majority could not agree on the nature of that source. Two Justices of the majority of five reached their conclusion by a broad interpretation of the word "State". Three other Justices in an opinion by Mr. Justice Jackson denied that rationale and based their con-

clusion on Article I, Section 8, giving Congress power to make rules and regulations for the District of Columbia. In 1956, Congress added residents of the Commonwealth of Puerto Rico to the group eligible to sue under the diversity jurisdiction. 70 Stat. 658. This is the statutory amendment under consideration. Assuming arguendo that the Commonwealth of Puerto Rico is not a "State" within the meaning of Article III, two further problems must be resolved. Is the Commonwealth of Puerto Rico a Territory within the meaning of Article IV, Section 3 of the Constitution which directs Congress to make Rules and Regulations for United States Territories? And if so, does Article IV, Section 3 provide the requisite constitutional directive for the 1956 amendment?

There is no doubt that prior to 1952, Puerto Rico was considered a territory of the United States. See e.g., People ex rel. Kopel v. Bingham, 189 N. Y. 124, 81 N. E. 773 (1907), aff'd 211 U. S. 468 (1909); Detres v. Lions Building Corp., 234 F. 2d 596 (7th Cir. 1956). Puerto Rico came to the United States by cession from Spain under the Treaty of Paris of December 10, 1898,[3] 30 Stat. 1754, 1755 (1899), as an aftermath of the Spanish-American War. For a short period of time it was under military government. By the Foraker Act, 31 Stat. 77, April 12, 1900, Congress established a temporary civil government for Puerto Rico to administer local affairs and to provide revenue. The inhabitants of Puerto Rico were declared to be citizens of Puerto Rico and entitled to the protection of the Constitution and laws of the United States.

The Foraker Act was superseded by the Organic Act of

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[3] The Treaty between the United States and Spain was signed at Paris, December 10, 1898; ratification advised by the Senate, February 6, 1899; ratified by the President February 6, 1899; ratified by Spain March 19, 1899; and ratifications exchanged and the Treaty proclaimed at Washington, April 11, 1899. See 30 Stat. 1754 (1899).

1917, 39 Stat. 951, 48 U. S. C. A. Section 831 et seq., which granted further local legislative powers to the government of Puerto Rico. By this Act of 1917 all inhabitants of Puerto Rico, with certain minor exceptions, were declared to be citizens of the United States. Many rights of local autonomy were enjoyed by the Puerto Ricans under the Organic Act which, as amended from time to time, remained the governing force in Puerto Rico until 1950. On July 3, 1950, the President approved the Puerto Rican Federal Relations Act, an Act "To provide for the organization of a constitutional government by the people of Puerto Rico." 64 Stat. 319, 48 U. S. C. A. Sections 731(b)-(e). This Act offered Puerto Rico "a compact so that the people of Puerto Rico . . . [could] organize a government pursuant to a constitution of their own adoption."[4] The "compact" was approved by the voters of Puerto Rico on June 4, 1951; a constitutional convention was convened, and the constitution drafted by it was ratified by the people of Puerto Rico on March 3, 1952, 48 U. S. C. A. Section 731(d) note. The President submitted it to Congress which, with minor amendments, approved it by Joint Resolution of Congress, 66 Stat. 327, on July 3, 1952. The Governor of Puerto Rico proclaimed the constitution of the Commonwealth of Puerto Rico to be in force on July 25, 1952.

Prior to the adoption of the Puerto Rican constitution and the establishment of the Commonwealth in 1952, the Island was organized and governed in a manner similar to that of the other territories of the United States. While its legislature was given considerable power over matters of local concern, the framework of government was prescribed by Congress, and the Organic Act of 1917 served as the constitution of Puerto Rico. It was clear that at this

[4] 48 U. S. C. A. Section 731(b).

time Puerto Rico qualified as a "Territory" for purposes of acts of Congress which included the territories. People of Puerto Rico v. Shell Co., 302 U. S. 253 (1937); People ex rel. Kopel v. Bingham, 211 U. S. 468 (1909); Crespo v. United States, 151 F. 2d 44 (1 Cir. 1945), cert. dismissed 327 U. S. 758 (1946). As the Supreme Court stated in the Kopel case, supra, at 475, the status of the Island conformed to one of the common definitions of a territory as a "portion of the country not included within the limits of any state, and not yet admitted as a state into the Union, but organized under the laws of Congress with a separate legislature, under a territorial governor and other officers appointed by the President and Senate of the United States."

In Detres v. Lions Building Corporation, supra, at 600 the court stated: "The mere change of the name of Puerto Rico to the Commonwealth of Puerto Rico did not change Puerto Rico from a territory to a commonwealth unless its actual form of government was so changed as to actually make it a commonwealth." The defendants agree with this statement but assert that the fact is that Puerto Rico's form of government was drastically changed in 1952 and some of those changes are of a character having special impact on the question of whether Congress intended Puerto Rico to remain a territory for the purposes of Section 1332(d). Under the Federal Relations Act, 64 Stat. 319, 48 U. S. C. A. Section 731 et seq., the people of the new Commonwealth were invested with powers of self government not characteristic of the sovereignty exercisable by citizens of a territory. They were enabled thereby to decide exclusively upon the number of branches of government, the extent of the powers of each branch, the method of election or appointment of personnel in each branch, the duration of terms of office of members of each branch, and the division of power as between each of the said branches.

There can be no doubt that as a matter of political and legal theory, and practical effect, Puerto Rico enjoys a very different status from that of a totally organized but unincorporated territory, as it formerly was. The government of the Commonwealth derives its powers not alone from the consent of Congress, but also from the consent of the people of Puerto Rico. However, under the terms of the "compact" the people of Puerto Rico do not exercise the full sovereignty of an independent nation, since they do not have control of their external relations with other nations. Further, as United States citizens the citizens of Puerto Rico are assured that their right to due process of law is protected by the federal Constitution.

The legislative history of the Puerto Rican Federal Relations Act offers strong support for the plaintiff's position that Puerto Rico, insofar as the issues at bar are concerned, may be deemed to have a status analogous to that of a territory. The House Committee Report stated, "It is important that the nature and general scope of S. 3336 [now 64 Stat. 319] be made absolutely clear. The bill under consideration would not change Puerto Rico's fundamental political, social, and economic relationship to the United States. Those sections of the Organic Act of Puerto Rico pertaining to the political, social and economic relationship of the United States and Puerto Rico concerning such matters as the applicability of United States laws, customs, internal revenue, Federal Judicial jurisdiction in Puerto Rico, Puerto Rican representation by a Resident Commissioner, etc., would remain in force and effect, and upon enactment of S. 3336 would be referred to as the Puerto Rican Federal Relations Act." H. R. Rep. No. 2275, 81st Cong., 2d Sess. (1950), in 2 U. S. Code Cong. Serv. 2681, 2682 (1950).[5]

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[5] The Senate Report contains language which is identical in sense with the House Report. See S. Rep. 1779, 96 Cong. Rec. 8321 (1950).

When the Detres case was decided the diversity section, as we have previously stated, contained no specific reference to the Commonwealth of Puerto Rico. Significantly, congressional action, in the wake of the Detres decision, gives legislative approval to this interpretation. In amending Section 1332 to include the Commonwealth of Puerto Rico the Senate Committee stated, "The Seventh Circuit Court of Appeals held that even though the 1952 constitution refers to the 'Commonwealth of Puerto Rico,' at the same time it is within the meaning of the term 'Territory' in section 1332. The court indicates that there was no intention on the part of Congress to affect the status of Puerto Rico as far as the application of section 1332 was concerned when the new constitution was authorized. To remove any doubts, the House Judiciary Committee favorably reports H. R. 9038 to expressly include the Commonwealth of Puerto Rico in the coverage of section 1332 of title 28 of the United States Code." S. Rep. No. 2605, 84th Cong. 2d Sess. (1956), in 2 U. S. Code Cong. and Adm. News 3557, 3558 (1956). Yet the actual passage of the amendment to Section 1332, indicates doubt as to the legal status of Puerto Rico as a Commonwealth. The Senate report also states that "H. R. 9038 fills an obvious gap in the law resulting from the change in status of Puerto Rico from a Territory to a Commonwealth."

Legal conclusions respecting the status of Puerto Rico as a commonwealth have varied from one extreme to the other. Chief Judge Magruder, long a student of Puerto Rican affairs, has commented that under certain statutes the Commonwealth may fall within the meaning of the word "State". He pointed out that, "The word 'State' may in the context of a particular act of Congress have a broader connotation than a state in the federal Union." Mora v. Mejias, 206 F. 2d 377 (1 Cir. 1953). In Mora v. Mejias, Judge Magruder called attention to the provisions of 28 U. S. C. Section 2281, which requires the convening of

a three-judge court whenever a suit is brought to restrain the "enforcement, operation or execution of any State statute . . . upon the ground of the unconstitutionality of such statute. . . ." Although pointing out that the Supreme Court had ruled that Section 2281 did not apply to the territory of Hawaii, Stainback v. Mo Hock Ke Lok Po, 336 U. S. 368 (1949), he suggested a different result as to Puerto Rico. In analyzing the commonwealth status of Puerto Rico and the use of the word "State" in Section 2281, he found that Puerto Rico might well be considered a state now for purposes of this section. The district court accepted the suggestion, holding that the Commonwealth of Puerto Rico was not a territory in the sense that Hawaii was and that Section 2281 required the convening of a three-judge court for the final hearing. Mora v. Mejias, 115 F. Supp. 610 (D. P. R. 1953).

Another view of Puerto Rico's commonwealth status was expressed in admitted dictum by a judge sitting on the District Court of Puerto Rico. He stated, "Puerto Rico is no longer a territory in the sense that the term is used in the Constitution and the cases. Therefore, if the Congress of the United States proposes in the future to make a statute applicable to Puerto Rico, I believe that generally speaking, it will have to make it so other than by the use of the term 'Territory'." Cosentino v. International Longshoremen's Ass'n, 126 F. Supp. 420 (D. P. R. 1954).

Congress in Chapter 79 (Definitions) of the Internal Revenue Code of 1954 has provided a separate section, 26 U. S. C., §7701(c), for the Commonwealth of Puerto Rico which insures that it will be included within the term "possessions" when not incompatible with the intent of the Act.[6] The Senate Report on Section 7701 states that

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[6] 26 U. S. C. A. Section 7701(c), provides, "Where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, references in this title to possessions of the United States shall be treated as also referring to the Commonwealth of Puerto Rico."

subsection (c) "is a clarifying amendment and does not change existing law." S. Rep., 83rd Cong. 2d Sess. (1954), in 3 U. S. Code Cong. and Adm. News 5271 (1954).

As we can see the term "Territories" has been considered susceptible of interpretation—that is, it does not have a fixed and technical meaning that must be accorded to it in all circumstances. In Puerto Rico v. Shell Co., 302 U. S. 253 (1937), the Supreme Court specifically recognized that the word "Territory", as used in the Acts of Congress may have different meanings so that Puerto Rico may be found to be included within one Act and excluded in another, depending not only on a "consideration of the words themselves, but by considering, as well, the context, the purpose of the law, and the circumstances under which the words were employed." Id. at 258. We believe we have demonstrated that Puerto Rico is a "Territory" within the purview of Article IV, Section 3.

Coming now to the issue, previously stated, as to whether Article IV, Section 3, provides the requisite constitutional authority for the 1956 amendment, we conclude that our answer must be "yes". We find the conclusion of Siegmund v. General Commodities Corp. 175 F. 2d 952 (9 Cir. 1949) and Lummus Co. v. Commonwealth Oil Refining Co., 195 F. Supp. 47 (S. D. N. Y. 1961), to be correct. The Siegmund opinion pointed out that the power of Congress to "make all needful rules and regulations respecting the territory . . . belonging to the United States" was expressly given by Article IV, Section 3 of the Constitution. Although the Siegmund case dealt with Hawaii, Lummus concerned the applicability of these principles to Puerto Ricans.

The second argument presented by the defendants is that Congress is without power to prescribe full faith and credit, in the courts of the several states to a judgment of the Superior Court of Puerto Rico. The issues pre-

sented in this argument are similar to those just discussed. Article IV, Section 1 of the Constitution commands that one state must give "full faith and credit" to the judicial proceeding of another state.[7] As was the case with jurisdiction of the courts the Constitution once again provides this effect only for "state" judicial proceedings. Congress in Section 1738, 28 U. S. C., while implementing this constitutional command, extended full faith and credit to the territories which the defendants contend is beyond their constitutional power.[8]

The extension of full faith and credit by Section 1738 to the territories has met with the approval of the Supreme Court. Embry v. Palmer, 107 U. S. 3 (1882); Atchinson, Topeka & Santa Fe Ry. v. Sowers, 213 U. S. 55 (1909); and Alaska Packers Assn. v. Industrial Accident Comm'n, 294 U. S. 532 (1935).[9] In Embry v. Palmer, supra, where the subject matter of the litigation was the effect of a judg-

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[7] Article IV, Section 1 provides, "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State."

[8] Section 1738, 28 U. S. C., provides: "The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

"The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the Court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

"Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

[9] The section has been applied in Perkins v. Benguet Consol. Mining Co., 55 Cal. App. 2d 720, 132 P. 2d 70 (1942), cert. denied, 319 U. S. 774 (1943); Butler v. Butler, 179 Misc. 651, 40 N. Y. S. 2d 353 (1943); and Hall v. Hall, 238 Md. 191, 208 A. 2d 593 (1965).

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The third issue raised by the defendants involves an

extension of the previous argument. Defendants contend that even if the application of full faith and credit to the territories by Section 1738 is constitutional a judgment of the Superior Court of Puerto Rico is not a judgment contemplated by this section of the statute. Defendants point out that in 1952[10] Puerto Rico became a Commonwealth. Section 1738, unlike Section 1332(d), does not specifically refer to the Commonwealth of Puerto Rico. Defendants point out that while Congress specifically amended Section 1332 to include the Commonwealth of Puerto Rico, this same Congress took no action respecting amendment of Section 1738.

We point out however, that Section 734 of the Federal Relations Act provides that, "The statutory laws of the United States not locally inapplicable, except as . . . otherwise provided, shall have the same force and effect in Puerto Rico as in the United States. . . ." 48 U. S. C. A. Section 734. The defendants admit that there is a government of the United States in Puerto Rico and that many statutory laws of the United States have the same force and effect in Puerto Rico as in the United States. In Moreno Rios v. United States, 256 F. 2d 68 (1 Cir. 1958), the court held that the Narcotic Drugs Import and Export Act continued to be applicable to Puerto Rico after its acquisition of commonwealth status. See also United States v. De Jesus, 289 F. 2d 37 (2 Cir. 1961). In view of Section 734, it is not necessary for Congress to alter specifically all outstanding statutes theretofore previously applicable in order to continue their effectiveness in Puerto Rico after it became a commonwealth. In the instant case, the defendants point out that the plaintiff is claiming continuing force and effect "in the United States" for the provisions

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[10] See Magruder, The Commonwealth Status of Puerto Rico, 15 Pitt. L. Rev. 1 (1953).

of Section 1738 while the Federal Relations Act, Section 734, deals only with the "force and effect in Puerto Rico" of statutes of the United States. We cannot conclude that the defendants' distinction is determinative of the issue before this court. Although Section 734 is not conclusive authority, it aids in understanding what Congress intended the relationship and status of the Commonwealth of Puerto Rico to the United States to be. Further the Foraker Act provided that the laws and ordinances then in force in Puerto Rico should continue in force and effect except insofar as they were inconsistent with the applicable statutory laws of the United States and with the provisions of the Foraker Act or which were altered thereafter pursuant to the provisions of that Act.

The basic goal of full faith and credit is to coordinate the administration of justice throughout the nation. In order to achieve this goal Congress enacted Section 1738 and by use of the words "State, Territory or Possession" Congress intended to unify all of the courts in our system of government. Defendants' contention in substance amounts to this—When Puerto Rico became a commonwealth its courts ceased to be within our system of government. We concur that with the creation of the Commonwealth something important occurred in Puerto Rico. We have, however, demonstrated that Puerto Rico was a "Territory" prior to 1952. When we also consider the congressional intent manifested by (1) the Puerto Rico Federal Relations Act, viz., that those laws applicable to Puerto Rico prior to 1952 remain applicable, (2) the Foraker provisions to the same effect, and (3) the House and Senate reports accompanying the bill which approved the commonwealth status of Puerto Rico and stated that, "The bill under consideration would not change Puerto Rico's fundamental political, social, and economic relationship to the United States," and that S. 3336, the Or-

ganic Act of Puerto Rico, pertaining to the political, social, and economic relationship of the United States and Puerto Rico concerning such matters as the applicability of United States laws, customs, internal revenue and the federal judicial jurisdiction in respect to Puerto Rico would remain in force and effect, we conclude that the Puerto Rican judgment is entitled to full faith and credit.

The judgment of the district court will be affirmed.

A True Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit.

OPINION OF THE COURT.

(Filed October 27, 1966.)

(As Amended December 7, 1966.)

By BIGGS, *Circuit Judge.*

This diversity action[1] is grounded on a default judgment, obtained in the Superior Court of Puerto Rico for $10,100 by Americana of Puerto Rico, Inc., against Samuel R. Kaplus and J. Kaplus & Sons, Inc.[2] The defendants appeal

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[1] Judgment against the corporate defendant was entered in the name of "Kaplus & Sons, Inc." but this appears to be a mere typographical error. The attached summons and complaint served on the defendants which resulted in the judgment in Puerto Rico describe the corporate defendant as "J. Kaplus & Sons, Inc." It is apparent that "J. Kaplus & Sons, Inc." was in fact the corporate defendant against whom the judgment was obtained.

[2] The plaintiff is a corporation of the Commonwealth of Puerto Rico, with its principal place of business at San Juan, Puerto Rico. The defendant, Samuel R. Kaplus, is a citizen of the State of New Jersey and the defendant, J. Kaplus & Sons, Inc., is a corporation of the State of New Jersey, having its principal place of business in the State of New Jersey.

from a summary judgment rendered on the ground that the courts of the Commonwealth of Puerto Rico are entitled to full faith and credit under 28 U. S. C. Section 1738 and also from an order denying their cross-motion to dismiss for lack of jurisdiction. The cross-motion was based on the theory that 28 U. S. C. Section 1332(d) was inapplicable to Puerto Rican residents in that Congress could not extend the diversity jurisdiction to them. See 240 F. Supp. 854 (1965).

We will consider the jurisdictional question first. Congress created the lower federal courts and prescribed their jurisdiction by the Judiciary Act of 1789. The Act stated that "The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of . . . [now $10,000 then $500] and is between—(1) citizens of different States. . . ." The construction of this section came before the Supreme Court in 1805 in Hepburn and Dundas v. Ellzey, 6 U. S. (2 Cranch) 445. Mr. Chief Justice Marshall held that a District of Columbia resident could not maintain a suit in the federal district court under the diversity clause. Since Congress copied the constitutional phrase *in haec verba*, Mr. Chief Justice Marshall, seeking to ascertain the intent of Congress, concluded that the District of Columbia was not within the purview of the word "State". He added, however: "It is true, that as citizens of the United States and of that particular district which is subject to the jurisdiction of congress, it is extraordinary, that the courts of the United States, which are open to aliens, and to citizens of every state in the union should be closed upon them. But this is a subject for legislative, not judicial consideration." Id. at 453.

Hepburn remained the law for more than 135 years. In 1940, Congress expanded the diversity jurisdiction of the courts to include controversies between "citizens of differ-

ent States, or citizens of the District of Columbia, the Territory of Hawaii or Alaska and any State or Territory." 54 Stat. 143. Constitutional power for this enactment was found in 1949. See National Mutual Insurance Company of District of Columbia v. Tidewater Transfer Co., 337 U. S. 582. The plaintiff in this case was a corporation in the District of Columbia. A majority of five Justices agreed that Congress had the sanction of the Constitution, i.e., that a source of constitutional power supported the enactment. A majority could not agree on the nature of that source. Two Justices of the majority of five reached their conclusion by a broad interpretation of the word "State". Three other Justices in an opinion by Mr. Justice Jackson denied that rationale and based their conclusion on Article I, Section 8, giving Congress power to make rules and regulations for the District of Columbia. In 1956, Congress added residents of the Commonwealth of Puerto Rico to the group eligible to sue under the diversity jurisdiction. 70 Stat. 658. This is the statutory amendment under consideration. Assuming arguendo that the Commonwealth of Puerto Rico is not a "State" within the meaning of Article III, two further problems must be resolved. Is the Commonwealth of Puerto Rico a Territory within the meaning of Article IV, Section 3 of the Constitution which directs Congress to make Rules and Regulations for United States Territories? And if so, does Article IV, Section 3 provide the requisite constitutional directive for the 1956 amendment?

There is no doubt that prior to 1952, Puerto Rico was considered a territory of the United States. See e.g., *People ex rel. Kopel v. Bingham*, 189 N. Y. 124, 81 N. E. 773 (1907), aff'd 211 U. S. 468 (1909); Detres v. Lions Building Corp., 234 F. 2d 596 (7th Cir. 1956). Puerto Rico came to the United States by cession from Spain under the

Treaty of Paris of December 10, 1898,[3] 30 Stat. 1754, 1755 (1899), as an aftermath of the Spanish-American War. For a short period of time it was under military government. By the Foraker Act, 31 Stat. 77, April 12, 1900, Congress established a temporary civil government for Puerto Rico to administer local affairs and to provide revenue. The inhabitants of Puerto Rico were declared to be citizens of Puerto Rico and entitled to the protection of the Constitution and laws of the United States.

The Foraker Act was superseded by the Organic Act of 1917, 39 Stat. 951, 48 U. S. C. Section 731 et seq., which granted further local legislative powers to the government of Puerto Rico. By this Act of 1917 all inhabitants of Puerto Rico, with certain minor exceptions, were declared to be citizens of the United States. Many rights of local autonomy were enjoyed by the Puerto Ricans under the Organic Act which, as amended from time to time, remained the governing force in Puerto Rico until 1950. On July 3, 1950, the President approved Public Law 600, an Act "To provide for the organization of a constitutional government by the people of Puerto Rico." 64 Stat. 319, 48 U. S. C. A. Sections 731(b)-(e). This Act offered Puerto Rico "a compact so that the people of Puerto Rico . . . [could] organize a government pursuant to a constitution of their own adoption."[4] The "compact" was approved by the voters of Puerto Rico on June 4, 1951; a constitutional convention was convened, and the constitution drafted by it was ratified by the people of Puerto Rico on March 3, 1952, 48 U. S. C. A. Section 731(d) note. The

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[3] The Treaty between the United States and Spain was signed at Paris, December 10, 1898; ratification advised by the Senate, February 6, 1899; ratified by the President February 6, 1899; ratified by Spain March 19, 1899; and ratifications exchanged and the Treaty proclaimed at Washington, April 11, 1899. See 30 Stat. 1754 (1899).

[4] 48 U. S. C. A. Section 731(b).

President submitted it to Congress which, with minor amendments, approved it by Joint Resolution of Congress, 66 Stat. 327, on July 3, 1952. The Governor of Puerto Rico proclaimed the constitution of the Commonwealth of Puerto Rico to be in force on July 25, 1952.

Prior to the adoption of the Puerto Rican constitution and the establishment of the Commonwealth in 1952, the Island was organized and governed in a manner similar to that of the other territories of the United States. While its legislature was given considerable power over matters of local concern, the framework of government was prescribed by Congress, and the Organic Act of 1917 served as the constitution of Puerto Rico. It was clear that at this time Puerto Rico qualified as a "Territory" for purposes of acts of Congress which included the territories. People of Puerto Rico v. Shell Co., 302 U. S. 253 (1937); People ex rel. Kopel v. Bingham, 211 U. S. 468 (1909); Crespo v. United States, 151 F. 2d 44 (1 Cir. 1945), cert. dismissed 327 U. S. 758 (1946). As the Supreme Court stated in the Kopel case, supra, at 475, the status of the Island conformed to one of the common definitions of a territory as a "portion of the country not included within the limits of any state, and not yet admitted as a state into the Union, but organized under the laws of Congress with a separate legislature, under a territorial governor and other officers appointed by the President and Senate of the United States."

In Detres v. Lions Building Corporation, supra, at 600 the court stated: "The mere change of the name of Puerto Rico to the Commonwealth of Puerto Rico did not change Puerto Rico from a territory to a commonwealth unless its actual form of government was so changed as to actually make it a commonwealth." The defendants agree with this statement but assert that the fact is that Puerto Rico's form of government was drastically changed in 1952 and

some of those changes are of a character having special impact on the question of whether Congress intended Puerto Rico to remain a territory for the purposes of Section 1332(d). Under the Act of July 3, 1950, Public Law 600, 64 Stat. 319, 48 U. S. C. A. Section 731b et seq., the people of the new Commonwealth were invested with powers of self government not characteristic of the sovereignty exercisable by citizens of a territory. They were enabled thereby to decide exclusively upon the number of branches of government, the extent of the powers of each branch, the method of election or appointment of personnel in each branch, the duration of terms of office of members of each branch, and the division of power as between each of the said branches.

There can be no doubt that as a matter of political and legal theory, and practical effect, Puerto Rico enjoys a very different status from that of a totally organized but unincorporated territory, as it formerly was. The government of the Commonwealth derives its powers not alone from the consent of Congress, but also from the consent of the people of Puerto Rico. However, under the terms of the "compact" the people of Puerto Rico do not exercise the full sovereignty of an independent nation, since they do not have control of their external relations with other nations. Further, as United States citizens the citizens of Puerto Rico are assured that their right to due process of law is protected by the federal Constitution.

The legislative history of the Act of July 3, 1950, Public Law 600 offers strong support for the plaintiff's position that Puerto Rico, insofar as the issues at bar are concerned, may be deemed to have a status analogous to that of a territory. The House Committee Report stated, "It is important that the nature and general scope of S. 3336 [now 64 Stat. 319] be made absolutely clear. The bill under consideration would not change Puerto Rico's funda-

mental political, social, and economic relationship to the United States. Those sections of the Organic Act of Puerto Rico pertaining to the political, social and economic relationship of the United States and Puerto Rico concerning such matters as the applicability of United States laws, customs, internal revenue, Federal Judicial jurisdiction in Puerto Rico, Puerto Rican representation by a Resident Commissioner, etc., would remain in force and effect, and upon enactment of S. 3336 would be referred to as the Puerto Rican Federal Relations Act." H. R. Rep. No. 2275, 81st Cong., 2d Sess. (1950), in 2 U. S. Code Cong. Serv. 2681, 2682 (1950).[5]

When the Detres case was decided the diversity section, as we have previously stated, contained no specific reference to the Commonwealth of Puerto Rico. Significantly, congressional action, in the wake of the Detres decision, gives legislative approval to this interpretation. In amending Section 1332 to include the Commonwealth of Puerto Rico the Senate Committee stated, "The Seventh Circuit Court of Appeals held that even though the 1952 constitution refers to the 'Commonwealth of Puerto Rico,' at the same time it is within the meaning of the term 'Territory' in section 1332. The court indicates that there was no intention on the part of Congress to affect the status of Puerto Rico as far as the application of section 1332 was concerned when the new constitution was authorized. To remove any doubts, the House Judiciary Committee favorably reports H. R. 9038 to expressly include the Commonwealth of Puerto Rico in the coverage of section 1332 of title 28 of the United States Code." S. Rep. No. 2605, 84th Cong. 2d Sess. (1956), in 2 U. S. Code Cong. and Adm. News 3557, 3558 (1956). Yet the actual passage of the

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[5] The Senate Report contains language which is identical in sense with the House Report. See S. Rep. 1779, 96 Cong. Rec. 8321 (1950).

amendment to Section 1332, indicates doubt as to the legal status of Puerto Rico as a Commonwealth. The Senate report also states that "H. R. 9038 fills an obvious gap in the law resulting from the change in status of Puerto Rico from a Territory to a Commonwealth."

Legal conclusions respecting the status of Puerto Rico as a commonwealth have varied from one extreme to the other. Chief Judge Magruder, long a student of Puerto Rican affairs, has commented that under certain statutes the Commonwealth may fall within the meaning of the word "State". He pointed out that, "The word 'State' may in the context of a particular act of Congress have a broader connotation than a state in the federal Union." Mora v. Mejias, 206 F. 2d 377 (1 Cir. 1953). In Mora v. Mejias, Judge Magruder called attention to the provisions of 28 U. S. C. Section 2281, which requires the convening of a three-judge court whenever a suit is brought to restrain the "enforcement, operation or execution of any State statute . . . upon the ground of the unconstitutionality of such statute. . . ." Although pointing out that the Supreme Court had ruled that Section 2281 did not apply to the territory of Hawaii, Stainback v. Mo Hock Ke Lok Po, 336 U. S. 368 (1949), he suggested a different result as to Puerto Rico. In analyzing the commonwealth status of Puerto Rico and the use of the word "State" in Section 2281, he found that Puerto Rico might well be considered a state now for purposes of this section. The district court accepted the suggestion, holding that the Commonwealth of Puerto Rico was not a territory in the sense that Hawaii was and that Section 2281 required the convening of a three-judge court for the final hearing. Mora v. Mejias, 115 F. Supp. 610 (D. P. R. 1953).

Another view of Puerto Rico's commonwealth status was expressed in admitted dictum by a judge sitting on the District Court of Puerto Rico. He stated, "Puerto Rico

is no longer a territory in the sense that the term is used in the Constitution and the cases. Therefore, if the Congress of the United States proposes in the future to make a statute applicable to Puerto Rico, I believe that generally speaking, it will have to make it so other than by the use of the term 'Territory'." Cosentino v. International Longshoremen's Ass'n, 126 F. Supp. 420 (D. P. R. 1954).

Congress in Chapter 79 (Definitions) of the Internal Revenue Code of 1954 has provided a separate section, 26 U. S. C., §7701(c), for the Commonwealth of Puerto Rico which insures that it will be included within the term "possessions" when not incompatible with the intent of the Act.[6] The Senate Report on Section 7701 states that subsection (c) "is a clarifying amendment and does not change existing law." S. Rep., 83rd Cong. 2d Sess. (1954), in 3 U. S. Code Cong. and Adm. News 5271 (1954).

As we can see the term "Territories" has been considered susceptible of interpretation—that is, it does not have a fixed and technical meaning that must be accorded to it in all circumstances. In Puerto Rico v. Shell Co., 302 U. S. 253 (1937), the Supreme Court specifically recognized that the word "Territory", as used in the Acts of Congress may have different meanings so that Puerto Rico may be found to be included within one Act and excluded in another, depending not only on a "consideration of the words themselves, but by considering, as well, the context, the purpose of the law, and the circumstances under which the words were employed." Id. at 258. We believe we have demonstrated that Puerto Rico is a "Territory" within the purview of Article IV, Section 3.

Coming now to the issue, previously stated, as to

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[6] 26 U. S. C. A. Section 7701(c), provides, "Where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, references in this title to possessions of the United States shall be treated as also referring to the Commonwealth of Puerto Rico."

whether Article IV, Section 3, provides the requisite constitutional authority for the 1956 amendment, we conclude that our answer must be "yes". We find the conclusion of Siegmund v. General Commodities Corp. 175 F. 2d 952 (9 Cir. 1949) and Lummus Co. v. Commonwealth Oil Refining Co., 195 F. Supp. 47 (S. D. N. Y. 1961), to be correct. The Siegmund opinion pointed out that the power of Congress to "make all needful rules and regulations respecting the territory . . . belonging to the United States" was expressly given by Article IV, Section 3 of the Constitution. Although the Siegmund case dealt with Hawaii, Lummus concerned the applicability of these principles to Puerto Ricans.

The second argument presented by the defendants is that Congress is without power to prescribe full faith and credit, in the courts of the several states to a judgment of the Superior Court of Puerto Rico. The issues presented in this argument are similar to those just discussed. Article IV, Section 1 of the Constitution commands that one state must give "full faith and credit" to the judicial proceeding of another state.[7] As was the case with jurisdiction of the courts the Constitution once again provides this effect only for "state" judicial proceedings. Congress in Section 1738, 28 U. S. C., while implementing this constitutional command, extended full faith and credit to the territories which the defendants contend is beyond their constitutional power.[8]

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We point out however, that Section 9 of the Federal Relations Act provides that, "The statutory laws of the United States not locally inapplicable, except as . . .

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otherwise provided, shall have the same force and effect in Puerto Rico as in the United States. . . ." 48 U. S. C. A. Section 734. The defendants admit that there is a government of the United States in Puerto Rico and that many statutory laws of the United States have the same force and effect in Puerto Rico as in the United States. In Moreno Rios v. United States, 256 F. 2d 68 (1 Cir. 1958), the court held that the Narcotic Drugs Import and Export Act continued to be applicable to Puerto Rico after its acquisition of commonwealth status. See also United States v. De Jesus, 289 F. 2d 37 (2 Cir. 1961). In view of Section 9, it is not necessary for Congress to alter specifically all outstanding statutes theretofore previously applicable in order to continue their effectiveness in Puerto Rico after it became a commonwealth. In the instant case, the defendants point out that the plaintiff is claiming continuing force and effect "in the United States" for the provisions of Section 1738 while the Federal Relations Act, Section 9, deals only with the "force and effect in Puerto Rico" of statutes of the United States. We cannot conclude that the defendants' distinction is determinative of the issue before this court. Although Section 9 is not conclusive authority, it aids in understanding what Congress intended the relationship and status of the Commonwealth of Puerto Rico to the United States to be. Further the Foraker Act provided that the laws and ordinances then in force in Puerto Rico should continue in force and effect except insofar as they were inconsistent with the applicable statutory laws of the United States and with the provisions of the Foraker Act or which were altered thereafter pursuant to the provisions of that Act.

The basic goal of full faith and credit is to coordinate the administration of justice throughout the nation. In order to achieve this goal Congress enacted Section 1738 and by use of the words "State, Territory or Possession"

Congress intended to unify all of the courts in our system of government. Defendants' contention in substance amounts to this—When Puerto Rico became a commonwealth its courts ceased to be within our system of government. We concur that with the creation of the Commonwealth something important occurred in Puerto Rico. We have, however, demonstrated that Puerto Rico was a "Territory" prior to 1952. When we also consider the congressional intent manifested by (1) the Puerto Rico Federal Relations Act, viz., that those laws applicable to Puerto Rico prior to 1952 remain applicable, (2) the Foraker provisions to the same effect, and (3) the House and Senate reports accompanying the bill which approved the commonwealth status of Puerto Rico and stated that, "The bill under consideration would not change Puerto Rico's fundamental political, social, and economic relationship to the United States," and that under S. 3336 when enacted, those sections of the Organic Act of Puerto Rico, pertaining to the political, social, and economic relationship of the United States and Puerto Rico concerning such matters as the applicability of United States laws, customs, internal revenue and the federal judicial jurisdiction in respect to Puerto Rico would remain in force and effect, we conclude that the Puerto Rican judgment is entitled to full faith and credit.

The judgment of the district court will be affirmed.

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Teste:

Clerk of the United States Court of Appeals for the Third Circuit.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 990

AMERICANA OF PUERTO RICO, INC.,
Respondent,

vs.

SAMUEL R. KAPLUS and J. KAPLUS & SONS, INC.,
Petitioners.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 990

AMERICANA OF PUERTO RICO, INC.,
Respondent,

vs.

SAMUEL R. KAPLUS and J. KAPLUS & SONS, INC.,
Petitioners.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

This brief is submitted on behalf of the respondent, Americana of Puerto Rico, Inc., in opposition to the petition of Samuel R. Kaplus and J. Kaplus & Sons, Inc. for a writ of certiorari to review the decision of the United States Court of Appeals for the Third Circuit entered in the above entitled action on October 27, 1966.

Opinions Below

The opinion of the United States District Court, District of New Jersey, is set forth at pages 9 through 13 of the petition. The opinion of the Circuit Court of Appeals for

the Third Circuit is set forth at pages 27 through 40 of the petition.

Questions Presented

1. Does 28 U.S.C. §1738 require the courts of the states to accord full faith and credit to a judgment of the Superior Court of Puerto Rico?

2. Is Congress empowered by the Constitution to require the courts of the states to accord full faith and credit to a judgment of the Superior Court of Puerto Rico?

Statement

The statement appearing on pages 4 and 5 of the petition sets forth adequately the facts relevant to this petition. However, two matters alluded to in the petition require clarification.

On page 5 of the petition the petitioner accurately states that just prior to oral argument the court was informed by the plaintiff (respondent herein) that for purposes of diversity jurisdiction the plaintiff was a citizen of the State of New York, and not of the Commonwealth of Puerto Rico, as had been previously alleged. Therefore, the diversity question became moot and those portions of the opinion dealing with the question of diversity jurisdiction are irrelevant for the purposes of this petition.

At page 8 of the petition, petitioner suggests that judgments of the courts of the various states of the Union may not enjoy full faith and credit in the courts of Puerto Rico. We believe this matter to be irrelevant, but for purpose of clarification, the Court's attention is respectfully directed to *Lichtig* v. *Lichtig*, 81 P.R.R. 716 (1960), which held that a New York judgment was entitled to full faith and credit

in the courts of Puerto Rico. Because Puerto Rican statutory law so provided, the court in *Lichtig* specifically did not reach the issue whether 28 U.S.C. §1738 or the "full faith and credit" clause of the Constitution would require the same result. *Id.* at.722, n. 5.

Reasons for Denying the Writ

I.

The statutory question was decided in accordance with a well-established line of cases.

Section 1738 of Title 28, United States Code provides that judicial proceedings of any state, territory or possession shall have the same full faith and credit throughout the United States, its territories and possessions, as they have in the state, territory or possession from which they are taken. Petitioner contends that Puerto Rico is neither a state, territory nor possession, and therefore the statute does not apply to a judgment of a Puerto Rican court. Since, prior to 1952 Puerto Rico was unquestionably a "territory" where that term was used in Congressional enactments, *New York ex rel. Kopel* v. *Bingham,* 211 U. S. 468 (1909); *Detres* v. *Lions Bldg. Corp.,* 234 F. 2d 596 (7th Cir. 1956), the argument more narrowly boils down to this: that Puerto Rico ceased to be included as a territory within the meaning of federal statutes when it was redesignated a commonwealth. This argument, raised in connection with other statutes, has been firmly laid to rest by a well-reasoned line of cases. *Moreno Rios* v. *United States,* 256 F. 2d 68 (1st Cir. 1958); *United States* v. *De Jesus,* 289 F. 2d 37 (2d Cir. 1961) *cert. denied,* 366

U. S. 963 (1961); *Lummus Co.* v. *Commonwealth Oil Refining Co.*, 195 F. Supp. 47 (S.D.N.Y. 1961); aff'd 297 F. 2d 80 (2nd Cir. 1961) *certiorari denied, sub-nom, Dawson* v. *Lummus Co.*, 368 U. S. 986 (1962); *Detres* v. *Lions Bldg. Corp., supra.*

The rationale of these cases is, perhaps, best expressed in *Moreno, supra,* where, in deciding that the Narcotic Drugs Import and Export Act continued to apply to Puerto Rico after 1952, the court had this to say at pp. 71, 72:

> "* * * [W]hen Congress uses the term "territory", this may be meant to be synonymous only with "place" or "area", and not necessarily to indicate that Congress has in mind the niceties of language of a political scientist who might say that Puerto Rico under its commonwealth status has ceased to be an unincorporated "territory" of the United States.
>
> There can be no doubt that the Narcotic Drugs Import and Export Act applied to Puerto Rico just prior to the date in 1952 when the Commonwealth came into being. That Act, originally passed in 1909 (35 Stat. 614), was amended in 1922 (42 Stat. 596) so as to define the term "United States", when used in a geographical sense, as including "the several States and Territories and the District of Columbia". * * *
>
> If, then, the Congress originally intended to apply the Act to Puerto Rico, it would seem clear, in view of the general provision of the Federal Relations Act to the effect that the statutory laws of the United States not locally inapplicable shall have the same force and effect in Puerto Rico as in the United States, that *it was not necessary for the Congress to alter specifically all outstanding statutes thereto previously applicable in order to continue their effectiveness in Puerto Rico after it became a commonwealth in 1952.* (Emphasis supplied.)

In light of the foregoing, we submit that petitioner's argument that the statute does not encompass Puerto Rico is so obviously without merit that it is unworthy of review by this Court.

II.

The Constitutional question was decided in accordance with well-established principles laid down by this Court.

Although Article IV, Section 1 of the Constitution, the "full faith and credit clause", speaks only of states, this Court has made clear that the powers of Congress are not circumscribed by that clause. In *Embry* v. *Palmer*, 107 U. S. 3 (1882) it was held that Congress had power to prescribe the effect of judgments of the Supreme Court of the District of Columbia by virtue of its power under the Constitution to legislate over the District, and to enact all necessary and proper legislation for executing such power over the District. Following the same rationale, this Court held that Congress had power under the Constitution to accord full faith and credit to the judgments of territorial courts. *Atchison, Topeka & Santa Fe Ry.* v. *Sowers*, 213 U. S. 55 (1909); *Alaska Packers Assn.* v. *Industrial Accident Comm.*, 294 U. S. 532 (1935). Full faith and credit was extended to a judgment of a sovereign Indian nation. *Cornells* v. *Shannon*, 63 F. 305 (8th Cir. 1894). It is clear that Constitutional sources other than Article IV, §1 enable Congress to accord full faith and credit to the judicial proceedings of political entities other than states.

The opinion of Judge Biggs demonstrates (1) that Puerto Rico is a territory within the meaning of Article

IV §3 of the Constitution, and (2) that Congress has the power by virtue of that Section, together with the "necessary and proper" clause, to prescribe the effect to be given to judgments of the Puerto Rican courts. The opinion is founded on the well-settled principles established by this Court in the above cited cases.

III.

Petitioner has shown no valid reason for review at this time.

There is as yet no conflict among the Circuits on the question decided below, nor has the question been decided in a way as to conflict with the applicable decisions of this Court. Although writs of certiorari are sometimes granted for the purpose of resolving conflicts actually existing among the Circuits, the mere possibility that such conflict may arise in the future is hardly a valid reason for review. Moreover, since the decision of the Third Circuit is in accordance with well-established principles laid down by this Court, there is no reason to believe that other Circuits will decide the question differently.

The extensive economic interchange between Puerto Rico and the continental United States does not support petitioner's contention that the issue requires the immediate attention of this Court. The decision of the Third Circuit, holding that judgments of the Superior Court of Puerto Rico are entitled to full faith and credit, is not disruptive of, and in fact tends to foster those close economic ties.

CONCLUSION

For the foregoing reasons we respectfully submit that the petition should be denied.

Respectfully submitted,

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